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10/578,574	02/12/2007	Tomiyasu Ueta	21581-00361-US1	9012
30678 7590 01/06/2010 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER VALDEZ, DEVE E				
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1796				
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01/06/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,574

Applicant(s)

UETA ET AL.

Examiner

DEVE VALDEZ

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9, 10 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 10, and 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

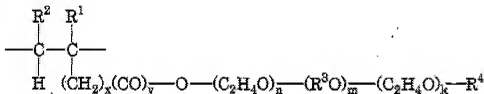
Claim Rejections - 35 USC § 102

- The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

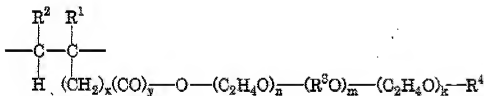
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- Claims 1-6, 9, 10, 13-17, 19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by NISHIKAWA (WO 2004/099100, hereinafter NISHIKAWA).
- Regarding claims 1, 2, 4, 9, 13, and 17, NISHIKAWA teaches a cement admixture and cement admixture composite comprising a polycarboxylic acid polymer containing a specific site, and the cement admixture composite comprises two or more species of cement admixtures, wherein at least one of is a said cement admixture (Abstract).The polycarboxylic acid polymer comprised in the cement admixture of the present invention is a polymer comprising two or more carboxylic acids or carboxylate salts in one molecule and into which a specific structure represented by the following formula (1) is introduced at a site (moiety) constituting the polymer:



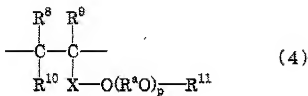
wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; $n+m+k$ is a number of 3 to 200; and R^4 represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms (p. 4, lines 6-26). The polyalkylene chain represented by the repeating number of n, m, and k in the above formula (1) is a form of so-called A-B-A block copolymer.

4. The polycarboxylic acid polymer essentially comprised can be obtained by polymerizing one or two or more species of monomers having a carboxylic acid or a carboxylic salt and a polymerizable double bond in one molecule and one or more species of monomers represented by the following formula (2);



wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; $n+m+k$ is a number of 3 to 200; and R^4 represents a hydrogen atom

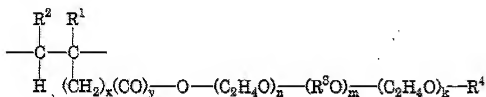
or a hydrocarbon group containing 1 to 20 carbon atoms (p. 6, lines 5-21). Furthermore, the cement admixture other than the cement admixture of the present invention in the cement admixture composite comprises a polymer, which is composed of monomer components containing polyalkylene glycol unsaturated monomer. It comprises a polymer having a site represented by the following formula (4):



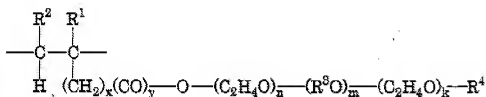
wherein R^8 , R^9 and R^{10} may be the same or different and each represents a hydrogen atom or a methyl group; R^{11} represents a hydrogen atom or a hydrocarbon group containing 1 to 30 carbon atoms; R^a may be the same or different and represents an alkylene group containing 2 to 18 carbon atoms; p represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 300; X represents a divalent alkylene group containing 1 to 5 carbons atoms, a CO- bond, a $\text{-R}^b\text{-CO-}$ bond, or a direct bond; and R^b represents a divalent alkylene group containing 1 to 5 carbon atoms. Furthermore, the polymer has a nitrogen atom or a polymer containing a branched structure and an oxyalkylene group is comprised (p. 22, lines 18-35; p.23, lines 1-9) (as required by claim 17). NISHIKAWA teaches the content ratio of the polyalkylene glycol unsaturated monomer and the unsaturated carboxylic acid monomer components is 0.1-2 (p. 24, lines 14-18) (as required by claim 2).

5. Regarding claims 3, 10, 14, and 19, NISHIKAWA teaches a cement admixture and cement admixture composite comprising a polycarboxylic acid polymer containing a specific site, and the cement admixture composite comprises two or more species of cement admixtures,

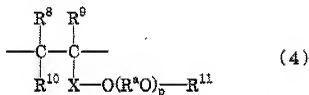
wherein at least one of is a said cement admixture (Abstract). The polycarboxylic acid polymer comprised in the cement admixture of the present invention is a polymer comprising two or more carboxylic acids or carboxylate salts in one molecule and into which a specific structure represented by the following formula (1) is introduced at a site (moiety) constituting the polymer:



wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; $n+m+k$ is a number of 3 to 200; and R^4 represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms (p. 4, lines 6-26) (as required by claim 14). NISHIKAWA teaches the weight average molecular weight of the polymer 3,000-30,000 (p. 24, lines 22-30). The mass ratio of the site represented by the formula (1) relative to the total mass of the polycarboxylic acid polymer is 10 to 95% by mass (p. 9, lines 8-10) (as required by claim 15). The polycarboxylic acid polymer essentially comprised can be obtained by polymerizing one or two or more species of monomers having a carboxylic acid or a carboxylic salt and a polymerizable double bond in one molecule and one or more species of monomers represented by the following formula (2);



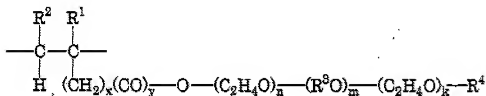
wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; $n+m+k$ is a number of 3 to 200; and R^4 represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms (p. 6, lines 5-21). Furthermore, the cement admixture other than the cement admixture of the present invention in the cement admixture composite comprises a polymer, which is composed of monomer components containing polyalkylene glycol unsaturated monomer. It comprises a polymer having a site represented by the following formula (4):



wherein R^8 , R^9 and R^{10} may be the same or different and each represents a hydrogen atom or a methyl group; R^{11} represents a hydrogen atom or a hydrocarbon group containing 1 to 30 carbon atoms; R^a may be the same or different and represents an alkylene group containing 2 to 18 carbon atoms; p represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 300; X represents a divalent alkylene group containing 1 to 5 carbons atoms, a -

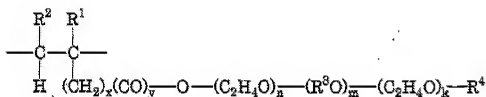
CO- bond, a -R^b-CO-bond, or a direct bond; and R^b represents a divalent alkylene group containing 1 to 5 carbon atoms. Furthermore, the polymer has a nitrogen atom or a polymer containing a branched structure and an oxyalkylene group is comprised (p. 22, lines 18-35; p.23, lines 1-9) (as required by claim 19).

6. Regarding claims 5, 6, 16, and 21, NISHIKAWA teaches a cement admixture and cement admixture composite comprising a polycarboxylic acid polymer containing a specific site, and the cement admixture composite comprises two or more species of cement admixtures, wherein at least one of is a said cement admixture (Abstract). The polycarboxylic acid polymer comprised in the cement admixture of the present invention is a polymer comprising two or more carboxylic acids or carboxylate salts in one molecule and into which a specific structure represented by the following formula (1) is introduced at a site (moiety) constituting the polymer:

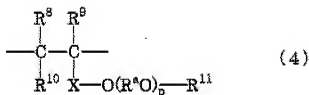


wherein R¹ and R² may be the same or different and each represents a hydrogen atom or methyl group; R³ may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; n+m+k is a number of 3 to 200; and R⁴ represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms (p. 4, lines 6-26). The mass ratio of the site represented by the formula (1) relative to the total mass of the polycarboxylic acid polymer

is 10 to 95% by mass (p. 9, lines 8-10). The polycarboxylic acid polymer essentially comprised can be obtained by polymerizing one or two or more species of monomers having a carboxylic acid or a carboxylic salt and a polymerizable double bond in one molecule and one or more species of monomers represented by the following formula (2);



wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 to 1; n and k represents an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 50; n+m+k is a number of 3 to 200; and R^4 represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms (p. 6, lines 5-21). Furthermore, the cement admixture other than the cement admixture of the present invention in the cement admixture composite comprises a polymer, which is composed of monomer components containing polyalkylene glycol unsaturated monomer. It comprises a polymer having a site represented by the following formula (4):



wherein R^8 , R^9 and R^{10} may be the same or different and each represents a hydrogen atom or a methyl group; R^{11} represents a hydrogen atom or a hydrocarbon group containing 1 to 30 carbon atoms; R_a may be the same or different and represents an alkylene group containing 2 to 18 carbon atoms; p represents an average molar number of addition of the oxyalkylene group and is a number of 1 to 300; X represents a divalent alkylene group containing 1 to 5 carbons atoms, a -CO- bond, a - R^b -CO-bond, or a direct bond; and R^b represents a divalent alkylene group containing 1 to 5 carbon atoms. Furthermore, the polymer has a nitrogen atom or a polymer containing a branched structure and an oxyalkylene group is comprised (p. 22, lines 18-35; p.23, lines 1-9) (as required by claim 21). The mass ratio of the site represented by the formula (1) relative to the total mass of the polycarboxylic acid polymer is 10 to 95% by mass (p. 9, lines 8-10) (as required by claim 16). The ratio is as follows: the total of monomers (A) to (D) /the monomer E = 100 to 60/40 (p. 40, lines 29-34) ((which would satisfy Claim 6).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

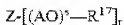
1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 18-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over NISHIKAWA (WO 2004/099100, hereinafter NISHIKAWA) in view of TOMITA et al. (U.S. Publication Application 2004/0107876, hereinafter TOMITA).

11. Regarding claims 18, 20, and 22, NISHIKAWA teaches a cement admixture and cement admixture composite comprising a polycarboxylic acid polymer containing a specific site, and the cement admixture composite comprises two or more species of cement admixtures, wherein at least one of is a said cement admixture (Abstract). However, NISHIKAWA does not teach polyoxyalkylene compound is a compound represented by the formula (10):



wherein Z represents a compound residue having active hydrogen R¹⁷'s are the same different, and represent a hydrogen atom, a hydrocarbon group, -Y-NR¹⁸R¹⁹, -COR²⁰ or -CH₂CH₂NHCO-R²¹, Y represents an alkylene group having 1 to 10 carbon atom(s), R¹⁸ and R¹⁹ are the same or different, and represent a hydrogen atom or a hydrocarbon group having 1 to 30 carbon atom(s),

R^{20} and R^{21} represent a hydrocarbon group having 1 to 30 carbon atom(s), or group having at least one carboxyl group or sulfonyl group or a salt thereof, AOs are the same or different, and represent an oxyalkylene group having 2 to 18 carbon atoms, "s"s are the same or different, and represent an average molar number of addition of an oxyalkylene group, and is 1 to 300, t is 1 to 300 and, regarding the total molar number of addition of the oxyethylene group in the oxyalkylene group as u and a total molar number of addition of an oxyalkylene group having 3 or more carbon atoms to be v, a relationship of $0.1 < u/(u+v) < 0.9$, $1 < u + v < 300$ is satisfied.

12. In the same field of endeavor, TOMITA teaches a concrete composition and cement admixture comprising polyalkylene compounds represented by following general formula (3):



13. wherein X represents the residue of an active hydrogen-containing compound, the R^5 groups are the same or different and each represents a hydrogen atom, a hydrocarbon group, --Y-- NR^6R^7 , --COR⁸, or --CH₂CH₂NHCO--R⁹ (Y representing an alkylene group containing 1 to 10 carbon atoms, R⁶ and R⁷ being the same or different and each representing a hydrogen atom or a hydrocarbon group containing 1 to 30 carbon atoms, R⁸ and R⁹ each representing a hydrocarbon group containing 1 to 30 carbon atoms or a group having at least one carboxyl or sulfonyl group or a salt thereof), the AO groups are the same or different and each represents an oxyalkylene group containing 2 to 18 carbon atoms, the n are the same or different and each n represents the mean number of moles of the oxyalkylene group added and is equal to 1 to 300, k is 1 to 300 and wherein, when the total number of moles of the oxyethylene group and the total number of the oxyalkylene group(s) containing not less than 3 carbon atoms in the above-mentioned oxyalkylene groups are represented by u and v, respectively, the relations $0.1 < u/(u+v) < 0.9$

and 1<u>v</u>300 are satisfied. In the polyoxyalkylene compound represented by the general formula (3), the group represented by X and/or the group represented by R^{sup.5} has a nitrogen atom [0032-0033]. The polyalkylene compounds causes favorable effects, such as reduction in unit water content, increase in strength, and improvement in durability [0062].

14. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the polyalkylene compound of TOMITA with the cement admixture of NISHIKAWA for the benefit of obtaining favorable effects, such as reduction in unit water content, increase in strength, and improvement in durability in the cement admixture.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

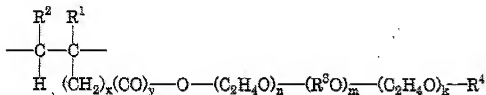
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

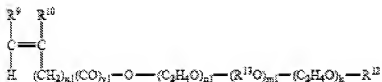
16. Claims 13 and 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No.7,368,488. Although the

conflicting claims are not identical, they are not patentably distinct from each other because of the reasons given below.

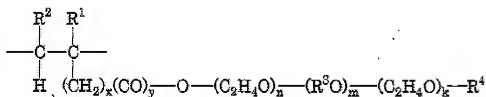
17. Claim 1 of U.S. Patent No. 7,368,488 claims a cement admixture comprising a polycarboxylic acid polymer, where said polycarboxylic acid polymer has a site represented by the following formula (1):



wherein R^1 and R^2 may be the same or different and each represents a hydrogen atom or a methyl group; R^3 may be the same or different and represents an alkylene group containing 3 to 18 carbon atoms; x represents a number of 0 to 2; y represents 0 or 1; n and k represent an average molar number of addition of an oxyethylene group, in which n is a number of 1 to 200 and k is a number of 1 to 200; m represents an average molar mass number of 1 to 50; $n+m+k$ is a number of 3 to 200; and R^4 represents a hydrogen atom or a hydrocarbon group containing 1 to 20 carbon atoms. While '488 does not claim a polycarboxylic acid copolymer having a polyalkylene glycol side chain containing an oxyalkylene group having 3 or more carbon atoms is by polymerizing a monomer component containing a polyalkylene glycol unsaturated monomer represented by the following formula (4):



The cement admixture comprising a polycarboxylic acid polymer, wherein the polycarboxylic polymer has a site represented by the following formula (1):



inherently has a polyalkylene glycol side chain containing an oxyalkylene group 3 or more carbon is by polymerizing a monomer with a similar formula. Therefore, it would have been obvious to a person of ordinary skill in the art to utilize the polycarboxylic acid polymer in order for the cement admixture to exhibit water-reducing performance and a cement composition with excellent handling properties.

18. Claims 13-14 are directed to an invention not patentably distinct from claim 1 of commonly assigned inventor. Specifically, see the discussion set forth in paragraph 17 above.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned inventor, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

18. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being obvious over WO 2004/099100 which is now U.S. Patent 7,368,488.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Response to Arguments

19. Applicant's arguments with respect to claims 1-6, 9, 10, and 13-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVE VALDEZ whose telephone number is (571)270-7738. The examiner can normally be reached on Mon-Thurs, 7:30pm-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DEVE VALDEZ/

/Rabon Sergent/
Primary Examiner, Art Unit 1796

